No. 06-114

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

AARON LEE JONES,

Petitioner,

—v.—

DONAL CAMPBELL, Commissioner, Alabama Department of Corrections, and the ATTORNEY GENERAL OF THE STATE OF ALABAMA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner Aaron Lee Jones respectfully submits this reply to Respondent's Brief in Opposition ("Opp. Br.") to Mr. Jones' petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit denying habeas corpus relief in this capital case.

ARGUMENT

Respondent asserts a boilerplate objection to certiorari that "questions" in the petition allegedly were not properly presented to the lower courts (Opp. Br. at 10). More specifically, Respondent alleges that Petitioner "did not argue in his rehearing brief to the Eleventh Circuit that its opinion was erroneous because: (1) it relied on mere speculation to excuse counsel's deficient performance; (2) its decision is in direct conflict with the professional standards for investigation and presentation of mitigating evidence; and (3) its analysis of the prejudice prong of the *Strickland* test is contrary to precedents of this court" (*Id.*; emphasis added) (*citing Strickland v. Washington*, 466 U.S. 668 (1984)).

All of these arguments indisputably were raised in Mr. Jones' rehearing brief to the Eleventh Circuit, though discussion was necessarily brief due to page limitations. *See, e.g.*, Rehearing Br. at 1, 11, 13.

It is immaterial, however, whether or not Petitioner made these arguments in its rehearing brief because this Court has never conditioned certiorari on a requirement that the arguments made in the petition or the questions that are proposed for the Court's review be presented in a particular brief before the lower courts. Most importantly, a petitioner does not waive the right to make

arguments before this Court that it fails to make in a rehearing brief. *See Parke v. Raley*, 506 U.S. 20, 28 (1992) (suggesting that the threshold for the Court's review is whether issues were raised in the petition for certiorari); *Medellin v. Dretke*, 544 U.S. 660, 682, n.1 (2005) (O'Connor J., Stevens J., Souter J. and Breyer J., dissenting) (new arguments in support of pending claims are permissible and do not bar the Court's review). *See also Yee v. City of Escondido*, 503 U.S. 519, 533 (1992) (in cases arising from federal courts, the Court's general rule that it will not consider "petitioners' claims that were not raised or addressed below" is "prudential only").

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: October 23, 2006

Respectfully submitted,

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